

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MINA MENKES,	)	
	)	Civil Action
Plaintiff	)	No. 2005-CV-02092
	)	
vs.	)	
	)	
JOANNE B. BARNHART,	)	
Commissioner,	)	
	)	
Defendant	)	

O R D E R

NOW, this 9th day of March, 2007, upon consideration of Plaintiff's Motion for Summary Judgment or, in the Alternative, Plaintiff's Motion for Remand, which motions were filed May 1, 2006; upon consideration of Defendant's Brief in Opposition to Plaintiff's Motion and in Support of Defendant's Motion for Summary Judgment, which brief and motion were filed on June 5, 2006; upon consideration of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa filed August 31, 2006; upon consideration of Plaintiff's Objections to the Report and Recommendation of the Magistrate Judge, which objections were filed September 8, 2006; upon consideration of Defendant's Response to Plaintiff's Objections of Defendant to the Report and Recommendation, which response was filed February 28, 2007; upon consideration of plaintiff's Complaint, defendant's Answer and after a through review of the record in

this matter; it appearing that plaintiff's objections<sup>1</sup> to Magistrate Judge Caracappa's Report and Recommendation are essentially a restatement of the issues raised in Plaintiff's Motion for Summary Judgment or, in the Alternative, Plaintiff's Motion for Remand and are without merit; it further appearing after de novo review of this matter that Magistrate Judge Caracappa's Report and Recommendation correctly determined the legal and factual issues presented,

IT IS ORDERED that Magistrate Judge Caracappa's Report and Recommendation is approved and adopted.<sup>2</sup>

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<sup>1</sup> The only new issue that plaintiff raises in her objections that is not a restatement of the issues raised in her original motion for summary judgment is plaintiff's attempt to include new evidence about a later application for benefits that took into consideration impairments (specifically, somatoform and personality disorder) that were not before the Administrative Law Judge in this matter. As correctly noted by defendant in response to plaintiff's objections, the court cannot consider this new evidence as part of our review of the within matter. See Matthews v. Apfel, 239 F.3d 589, 594 (3d Cir. 2001). Accordingly, based upon Matthews, we decline to consider the new evidence advanced by plaintiff in her objections.

<sup>2</sup> The extent of review of a Magistrate Judge's Report and Recommendation is committed to the discretion of the district court. Jozefick v. Shalala, 854 F.Supp. 342, 347 (M.D.Pa. 1994). However, the district court must review de novo those portions of the Report and Recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(c). The court may "accept, reject or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F.Supp.2d 667, 669 (E.D.Pa. 2001); Rule 72.1(IV)(b) of the Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania.

Furthermore, district judges have wide latitude regarding how they treat recommendations of the magistrate judge. See United States v. Raddatz, 447 U.S. 667, 100 S.Ct. 2406, 65 L. Ed. 2d 424 (1980). Indeed, by providing for a de novo determination, rather than a de novo hearing, Congress intended to permit a district judge, in the exercise of the court's sound discretion, the option of placing whatever reliance the court chooses to place on the magistrate judge's proposed findings and conclusions. We may accept, reject or modify, in whole or in part any of the findings or recommendations made by the magistrate judge. Raddatz, supra.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that plaintiff's alternate motion for remand is denied.

IT IS FURTHER ORDERED that defendant's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that plaintiff's objections to the Report and Recommendation of Magistrate Judge Caracappa are overruled.<sup>3</sup>

IT IS FURTHER ORDERED that judgment is entered in favor of defendant and against plaintiff.

IT IS FURTHER ORDERED that the Clerk of Court shall close this civil action for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER  
James Knoll Gardner  
United States District Judge

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<sup>3</sup> As noted above, except as discussed in footnote 1, we conclude that plaintiff's objections to Magistrate Judge Caracappa's Report and Recommendation are nothing more than a restatement of the underlying claims contained in her motion for summary judgment. Moreover, upon review of the Report and Recommendation, together with de novo review of the entire record in this matter, we conclude that the Report and Recommendation correctly determines the legal and factual issues raised by plaintiff.

Accordingly, we approve and adopt Magistrate Judge Caracappa's Report and Recommendation and overrule plaintiff's objections to the Report and Recommendation.